



The City Council of Framingham

CITY OF FRAMINGHAM
CITY CLERK'S OFFICE

2021 FEB 19 35 A 11:41



ORDER NO. 2021-011
REQUEST OF ORDINANCE AND RULES SUBCOMMITTEE

UPON THE REQUEST OF THE ORDINANCE AND RULES SUBCOMMITTEE, THE CITY OF FRAMINGHAM,
THROUGH THE FRAMINGHAM CITY COUNCIL, IT IS SO ORDERED:

That the City Council adopts the Ordinance for the Implementation of the Community
Preservation Act as amended by the Ordinance and Rules Subcommittee and further
amended by Councilor Long.

The full text of the Ordinance for the Implementation of the Community Preservation Act
follows this Order.

FIRST READING

YEAS: Bryant, Cannon, Case, King, Leombruno, Ottaviani, Shepard, Stefanini, Steiner,
Stewart-Morales
NAYS: None
ABSTAIN: Long
ABSENT: All members were present in person or via teleconferencing
PASSED IN COUNCIL: JANUARY 19, 2021

SECOND READING

YEAS: Bryant, Cannon, Case, King, Leombruno, Long, Ottaviani, Shepard, Stefanini,
Steiner, Stewart-Morales
NAYS: None
ABSTAIN: None
ABSENT: All members were present in person or via teleconferencing
PASSED IN COUNCIL: FEBRUARY 2, 2021

A True Record, Attest:

City of Framingham
CITY OF FRAMINGHAM
CITY CLERK'S OFFICE

The City Council of Framingham

2021 FEB 19 A 11:42



2/4/2021

Date Approved

Lisa A. Ferguson

Lisa A. Ferguson, City Clerk
Emily Butler, Assistant City Clerk

Date Approved

[Signature]
Yvonne M. Spicer, Mayor

*See attached veto statement
2/19/2021
JMS*

VETO OVERRIDDEN ON MARCH 9, 2021 BY THE FRAMINGHAM CITY COUNCIL.

YEAS: CANNON, CASE, KING, LEOMBRUNO, LONG, OTTAVIANI, SHEPARD,
STEFANINI, STEINER, STEWART-MORALES
NAYS: BRYANT
ABSTAIN: NONE
ABSENT: ALL MEMBERS WERE PRESENT IN MEETING ROOM OR VIA TELECONFERENCING

PASSED IN COUNCIL: MARCH 9, 2021

3/12/2021

DATE APPROVED

Lisa A. Ferguson

LISA A. FERGUSON, CITY CLERK

City of Framingham

The City Council of Framingham



2021 SEP 12 PM 9:35

Ordinance for the implementation of the Community Preservation Act

Be it ordained by the Framingham Council, as follows:

SECTION 1.

Article I of the Framingham Ordinances is hereby amended by adding after "Community Development Committee" in section 2.4 the following:

Community Preservation Committee	Nine	Three Years	As defined in Article II, Section 32	3 in years one, two, and three
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SECTION 2.

Article II of the Framingham Ordinances is hereby amended by adding at the end thereof the following new section:

Section 32: Community Preservation Committee

32.1: Preamble

Framingham residents voted on November 3, 2020 to adopt the Massachusetts Community Preservation Act ("Act"), Chapter 267 of the Acts of 2000, codified as M.G.L. c. 44B, establishing a restricted Community Preservation Fund ("Fund") to be used for open space protection and preservation, creation of outdoor recreation, historic preservation, and maintenance and development of affordable housing. The Act requires that the City of Framingham establish an independent Community Preservation Committee ("Committee") to oversee and administer the Fund.

All Committee members shall be Framingham residents. , and the Committee's composition shall reflect the demographic and geographic diversity of the City.

It shall be the policy of the Committee to administer the Fund to protect, preserve, maintain, and enhance the quality of life of Framingham residents in perpetuity, consistent with the purposes and strictures of the Act. Therefore, the Committee's mission shall be to do the following:

- (1) seek projects that leverage additional public and private resources, where available, to maximize use of available Funds;

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- (2) solicit, evaluate, and recommend projects for funding through accessible, ethical, transparent, and fair processes; and
- (3) strive for receipt of applications and to recommend projects that representing the diverse geographic and demographic population of Framingham.

32.2: Establishment

- 32.2.1 The Framingham Community Preservation Committee is hereby established in accordance with the Act, consisting of nine (9) members. Members shall serve for staggered terms of three years, though initially, at establishment of the Committee, member terms shall be of varying lengths (one, two, or three years) as described below to ensure continuity in the Committee's administration of the Fund.
- 32.2.2 The composition of the Committee, the designating authority for Committee members, and initial terms of office shall be as follows:
 - a. One member of the Planning Board (created by Section 81a of Chapter 41 and appointed by Mayor) as designated by the Board for an initial term of three years;
 - b. One member of the Conservation Commission (created by Section 8C of Chapter 40 and appointed by Mayor) as designated by the Commission for an initial term of two years;
 - c. One member of the Historical Commission (created by Section 8D of Chapter 40 and appointed by Mayor) as designated by the Commission for an initial term of one year;
 - d. One member of the Parks and Recreation Commission (created by Section 2 of Chapter 45 and appointed by Mayor) as designated by the Commissioners for an initial term of one year;
 - e. One member of the Housing Authority Board (created by Section 3 of Chapter 121B and appointed by Mayor and Governor) as designated by the Board for an initial term of two years;
 - f. Four members designated by the Council for initial terms of one, three, two and three years, respectively.
- 32.2.3 All members shall be Framingham residents. The Council shall consider the designations by multiple-member bodies before making their designations to balance the demographic and geographic diversity of the entire Committee. The Council shall consider, to the extent practicable, the expertise and/or interest of applicants, as demonstrated by education, training and previous experience, in open space,

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agriculture, outdoor recreation, historic preservation, affordable housing, planning, program or project management, municipal finance, or fiscal accounting practices. Members designated by the Council are prohibited from holding any other position on a multiple-member body nor hold any position as a municipal officer while serving as a member of the Committee.

32.2.4 Any mid-term vacancy on the Committee shall be filled within 60 days by the designating authority for the unexpired term. If a Committee member designated in accordance with subsections a through e above cease to be a member of their respective board, authority, committee, or commission, they will cease to be a member of the Committee. The Council shall post vacancies on the Municipal Bulletin Board at least 21 days before making any designations.

32.2.5 Multiple-member bodies shall make their initial designations within 30 days of this ordinance becoming effective. The Council shall make their initial designations within 60 days of this ordinance becoming effective. The length of initial terms shall be calculated as if the terms had started on July 1, 2021.

32.3: Duties

32.3.1 The Committee shall meet as necessary to carry out its duties, but in any fiscal year shall hold no fewer than six meetings.

32.3.2 The Committee may, subject to appropriation by the Council, incur expenses as permitted by state law using monies from the Fund, grants or gifts to pay such expenses.

32.3.3 The Committee shall be responsible for the following:

(1) study and maintain a listing of the needs, possibilities and resources of the city regarding community preservation. The Committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the parks commissioners and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies.

(2) review relevant master plans and studies prepared by municipal officers to better understand land use needs.

(3) develop a long-term and short-term community preservation program and financial plan for Framingham that identifies goals and needs, establishes priorities, and sets criteria for evaluating proposed projects. The financial plan shall include a multi-year revenue and expenditure forecast, including identifying other available public or private financing sources. The program and financial plan shall be reviewed

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and updated annually to reflect changes in the community's needs, priorities and resources.

(4) hold two or more public informational hearings which shall be posted publicly and published for two consecutive weeks preceding each hearing in a newspaper of general circulation in the City and on the Municipal Bulletin Board.

- 32.3.4 As part of its long-term and short-term community preservation program and financial plan development, the Committee shall annually hold one or more public informational hearings on the needs, possibilities and resources of the city regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for two consecutive weeks preceding a hearing in a newspaper of general circulation in the city and posted on the Municipal Bulletin Board.
- 32.3.5 The Committee shall solicit applications throughout all neighborhoods within Framingham, providing application information and assistance with such application to residents in every neighborhood without exception. The Committee shall provide technical assistance on the application process and keep and maintain public records of all project applications proposed, rejected and approved posted on the Municipal Bulletin Board. The Committee is not obligated to recommend that the Council approve funding for a project simply because the project is eligible for CPA funding.
- 32.3.6 The Committee shall publish its proposed project recommendations and notice of a hearing in a newspaper of general circulation in the community and on a Municipal Bulletin Board for two consecutive weeks before the Committee takes a final vote on such recommendations to the Council.
- 32.3.7 Once per fiscal year, on or before February 1, the Committee shall bring forward those recommended projects for fund appropriations to the Council as follows:
- a. acquisition, creation and preservation of open space;
 - b. acquisition, preservation, rehabilitation and restoration of historic properties/resources;
 - c. acquisition, creation, preservation, rehabilitation and restoration of land for recreational use;
 - d. acquisition, creation, preservation and support of affordable community housing; and,
 - e. rehabilitation or restoration of open space and affordable community housing that is acquired or created with the Fund.

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Project recommendations shall include the timeline for implementation, anticipated project cost, appropriation requested, and all other funding sources. With respect to affordable community housing, the Committee shall recommend, wherever possible, the redevelopment of existing buildings or construction of new buildings on existing sites. Notwithstanding, the Committee may, upon a two-thirds vote of the Committee, bring additional recommendations for projects for appropriations to the Council during any given fiscal year. These recommendations shall require a two-thirds vote of the full Council for approval.

- 32.3.8 The Committee may include set aside funds for future use where sufficient funds are not available at the time. Such recommendation to the Council for deferred spending of monies shall be earmarked for specific purposes consistent with community preservation. Alternatively, the Committee may recommend action to set aside monies for later spending for general purposes that are consistent with the Act.
- 32.3.9 On or before April 1 each year, the Committee shall submit to the Mayor and the Council, an annual administrative and operating budget for the Committee for the next fiscal year, which shall not exceed five percent (5%) of that year's estimated annual Fund revenues. The Council shall vote on said request by June 30 of each year.
- 32.3.10 For the purposes of community preservation and upon the recommendation of the Committee, the City may take by gift or eminent domain under M.G.L. c. 79 the fee or any lesser interest in real property or waters located in the City if such gift or taking has first been approved by a two-thirds vote of the Council. Upon a like recommendation from the Committee and vote by the majority of the full Council, the City may expend monies in the Fund, if any, for the purpose of paying, in whole or in part, any damages for which the City may be liable by reason of a taking for the purposes permitted by the Act.
- 32.3.11 The Committee may recommend to the Council the issuance of general obligation bonds or notes, in accordance with the provisions of M.G.L. c. 44B § 11, in anticipation of revenues to be raised pursuant to the provisions of M.G.L. c. 44B § 3, if such bonds have first been approved by a two-thirds vote of the full Council, the proceeds of which shall be deposited in the Fund.

32.4: Requirement for a quorum, uniform procedures and organization

The Committee shall not meet or conduct business without the presence of a quorum and shall keep a written record of its proceedings. A majority of the full Committee shall constitute a quorum. The Committee shall approve its actions by majority vote. The Committee shall adhere to uniform procedures governing multiple-member bodies in

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accordance with Article I, Section 7. The Committee members shall annually select a chair, vice-chair, and clerk from its membership.

SECTION 3.

Severability

If any provision of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION 4.

Effective Date

This ordinance shall take effect immediately.



CITY OF FRAMINGHAM

OFFICE OF THE MAYOR

Dr. Yvonne M. Spicer
Mayor

508-532-5401
mayor@framinghamma.gov
www.framinghamma.gov

MEMORIAL BUILDING
150 Concord Street, Room 121
Framingham, MA 01702

Thatcher W. Kezer III
Chief Operating Officer

MEMORANDUM

To: George P. King, Chair
Adam C. Steiner, Vice Chair, District 3 City Councilor
Janet Leombruno, Councilor at Large
Christine A. Long, District 1 City Councilor
Cesar Stewart-Morales, District 2 City Councilor
Michael P. Cannon, District 4 City Councilor
Robert D. Case, District 5 City Councilor
Phillip R. Ottaviani, Jr., District 6 City Councilor
Margareth Basilio Shepard, District 7 City Councilor
John A. Stefanini, District 8 City Councilor
Tracey Bryant, District 9 City Councilor

From: Dr. Yvonne M. Spicer, Mayor
cc: Lisa Ferguson, Maureen McKeon, Chris Petrini
Date: February 19, 2021
Re: Veto statement for CPC Ordinance

As Mayor, I am fully supportive of the City's adoption of the Community Preservation Act and I continue to support the goals of community preservation which the Community Preservation Committee will help the City achieve. The Council has passed a comprehensive ordinance, much of which I agree with, that provides a forward-looking blueprint for the Committee to do its job effectively with input from key stakeholders and the community at large. Like many in our community, I am excited for the Committee to get to work to start serving the people of Framingham.

As City officials, however, we all are duty-bound and obligated to honor and respect the terms of the Charter, Framingham's constitution, which was approved by the voters in April 2017 and provides a comprehensive scheme governing how our city government is required to operate. Article IX, Section 14 (p. 55) of the Charter specifically makes it my responsibility as your Mayor to see that the provisions of the Charter are faithfully followed. Although I am largely in agreement with the Council's vision for the Community Preservation Committee set forth in the proposed ordinance as passed, in its current form it is not consistent with the Charter. The Charter, which several current and past City Councilors served on the Charter Commission that drafted the Charter, expressly provides that the Mayor is the appointing authority for all multiple-member bodies, and that my appointments are subject to the approval of the Council.



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Article III, Section 3(a) (p. 24) (**Mayor appoints members of multiple member bodies subject to Council review**) & Article II, Section 10(c) (p. 21) (**Council approves or rejects Mayor's appointments to multiple member bodies within 30 days**). There is no dispute that the Community Preservation Committee is a multiple-member body which should be subject to this shared responsibility between the executive and legislative branch. Contrary to the requirements of the Charter, the proposed ordinance provides for four at large residents of Framingham to be appointed to the Committee, but makes the Council, rather than the Mayor, the appointing authority for those positions, effectively leaving the Mayor completely out of the process in designating or appointing any of the positions on the Committee. Besides the four at large members chosen solely by the Council as set forth in the proposed ordinance, the other members of the proposed Committee--one designee each by the Conservation Commission, Historical Commission, Planning Board, Park Commission and Housing Authority--are designated by the respective board or commission under the proposed ordinance and the applicable general law, G.L. c. 44B, s. 5 ("Section 5"), and not by the Mayor. Even though I appoint the members of these City boards subject (of course) to the approval or disapproval of the Council, I do not have the right under either Section 5 or the proposed ordinance to choose the specific designees from these five boards to serve on the Committee, and thus have been completely left out of the process contrary to the Charter as outlined above.

While I have reviewed the arguments offered by the proponents of the ordinance as to why the Council's assumption of the Mayor's appointing authority here is permissible, my understanding is that the City Solicitor has researched these arguments and, in his opinion, they are without merit. The Councilor for District 8, who played a major role in authoring the Charter, has claimed that the Town of Weymouth, with a Charter which is similar to Framingham, set up its Community Preservation Committee the same way. This is incorrect. In Weymouth, the ordinance establishing the Community Preservation Committee included a designated member of Weymouth's Town Council in addition to the bodies set forth in Section 5 as enumerated above, but the remaining three at large residents serving on Weymouth's committee are appointed by Weymouth's mayor. See Weymouth Code, §3-227, available at <https://ecode360.com/35961112> (last accessed Feb. 18, 2021). Those mayoral appointments in Weymouth are of course subject to the approval of the Weymouth Town Council, as the appointments in Framingham would be for the Committee in an ordinance that was consistent with the Charter. Weymouth's at large appointments are not made solely by its Town Council as is the current proposed Framingham ordinance provides.

Second, the Council in considering this ordinance attempted to draw an analogy between its adoption of the Bylaw Review Committee's recommendation, adopted by the Council, to make the Mayor's appointments to the Cable Advisory Committee not subject to the approval of the Council given the express language in the statutes and regulations which make the Mayor the issuing authority for cable licenses and which vests the Mayor with the sole authority to create and appoint a cable advisory committee. The Charter in that instance must yield to the general laws because except for special acts and local option statutes, state law controls in the event of



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a conflict with the Charter. Article I, Section 5 (p. 13). In the present case, Section 5, the governing state general law, provides that the ordinance establishing the Community Preservation Committee can establish the method of selection as either appointed, elected or a combination of both. As noted above, Section 5 provides for certain designated representatives of City boards to be automatically included on the Committee as designated by those boards and not the Mayor, which takes precedence over local procedures for those appointments for the same reason as the Bylaw Review Committee's conclusions with regard to the Cable Advisory Committee. However, Section 5 does not provide that the ordinance can override the provisions of the local Home Rule Charter as to who should be appointing authority for multiple member bodies for positions not specifically designated in the statute and does not specify the appointing authority for at large members of a community preservation committee. Therefore, the Charter's provisions on the appointment powers for multiple-member bodies definitely apply and remain governing in these circumstances.

For these reasons, I am disapproving of this measure pursuant to my authority under Article III, Section 7 (p. 27) of the Charter. I share the Council's goal of getting this Committee established promptly, so I urge the Council to quickly act to amend the proposed ordinance so it complies with the Charter and I can quickly approve it so the City can move forward in this important mission.